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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1960.

No. 612

DUANE F. LEE and MARGARET LEE,

Petitioners,

vs.

TERMINAL TRANSPORT COMPANY, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS BELOW.

The opinion of the District Court was not reported, but is reprinted as Appendix II of the Petition for Certiorari. The decree for injunction issued by the District Court is not reprinted as Appendix II to the Petition as stated in said Petition.

The opinion of the Court of Appeals for the Seventh Circuit (Appendix I of the Petition) is reported at 282 Fed. 2nd 805.

The earlier opinion of the Court of Appeals of the Seventh Circuit (Appendix III of the Petition) is reported at 269 Fed. 2nd 97.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

THE QUESTIONS PRESENTED.

1. Does a state court have jurisdiction to entertain an independent action, the sole object of which is to amend, modify, or enlarge upon a final judgment of a U.S. District Court between the same parties?

2. After an appeal to the Circuit Court of Appeals, from a District Court judgment *non obstante verdicto* in favor of defendant-respondent, during which appeal the appellant-Petitioner failed to ask that interest from verdict be included in the mandate, and in the face of a mandate silent as to interest, can a state court entertain an independent suit seeking to award such interest.

3. Does a U.S. District Court have the power to protect its judgment by enjoining the prosecution of a state court action which seeks solely to amend, modify or enlarge upon such judgment by awarding interest thereon, after such District Court has entered such judgment without such interest, pursuant to a mandate of the Circuit Court of Appeals.

4. Can Petitioners independently relitigate in a state court the issue of interest on a judgment of a U.S. District Court, after Petitioners failed to raise this issue when the same parties were before the Circuit Court of Appeals which had the sole jurisdiction to grant or deny such interest?

STATUTE INVOLVED.

The only statute involved in 28 U.S.C. 2283, which states:

> "A Court of the Untied States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The Indiana or Federal statutes on interest are not involved, as the question of interest was adjudicated below by the failure of Petitioners to present it during the litigation.

STATEMENT OF THE CASE.

Petitioner's statement of the case is satisfactory except for the following:

1. On page 7 of the Petition it is stated that Petitioners took an appeal from this judgment to the Court of Appeals for the Seventh Circuit, referring to the March 18, 1958 Judgments on the verdicts entered against defendant-respondent. Actually, Petitioner's first appeal was from a June 30, 1958 order of the District Court entering judgment in favor of the defendant on its motion for judgment *non obstante verdicto.*

2. The opinion of the Court of Appeals, of which review is sought by this Petition, travels on a much broader concept than outlined by Petitioner on pages 9 and 10 of the Petition. The Court of Appeals rather than taking the narrow view that its first opinion was *res judicata* that Petitioners were not entitled to interest, took the broader view that failure by a litigant to assert the right to interest in the Court of Appeals, could not

confer jurisdiction on a state court. This is not an opinion that Petitioners are not entitled to interest, but rather an opinion that they were trying to assert that right in a court that had no jurisdiction, after a full and final adjudication in the Federal courts. The real basis of the opinion of the Court of Appeals was that Federal courts have sole jurisdiction over a claim for interest on a Federal court judgment, and that it is neither permissible or necessary to resort to a state court over such a matter.

ARGUMENT.

The issue in this case is very narrow, *viz:* did the District Court properly enjoin the prosecution of the Illinois state court action which sought to have the Illinois court award interest on the District Court judgment. There is nothing unique or of great import, about the proposition of enjoining a state court action that interferes with a federal court judgment or seeks to relitigate matters already litigated in a federal court. A long line of Federal decisions prior to the case of *Toucey* v. *New York Life Insurance Company* (1941) 314 U.S. 118, upheld such right of injunction. The 1948 revision of the Judicial Code, specifically granted this power and restored the basic law as it was understood prior to the *Toucey* case. Thus, the decision sought to be reviewed, does not come within the provisions of Rule 19 1 (b) of this Court, as (a) being in conflict with another decision of a court of appeals on the same matter, or as (b) being an important state question in conflict with applicable state law, or (c) an important question of federal law which has not been settled by this court or which is in conflict with decisions of this court.

Plaintiffs have strained to inject into this case, the question of whether they were or were not entitled to interest, under the Indiana statute, or the applicable Federal statute on interest. The plain fact is that interest on the judgments was not the issue below, and even if certiorari were granted, a decision of this Court reversing the Court of Appeals would only be a decision that the Illinois State Court could proceed, free of the District Court injunction, to decide the question of interest.

It is inescapable, under the decision in *Briggs* v. *Pennsylvania R. Co.*, 334 U.S. 304, that the District Court could not enlarge upon the mandate of the Court of Appeals, by including interest on the judgment. In the *Briggs* case a district court had allowed interest on a judgment when the mandate of the Court of Appeals made no provision for such interest. This Court held in the *Briggs* case that the District Court had no power to enter a judgment for an amount different than directed by the mandate, and that if any enlargement of the judgment were possible, it could only be done by amendment of the mandate. No different question was presented below, except that there the Petitioners took the position that the Superior Court of Cook County, Illinois had the power that the District Court did not have, *viz.* to disregard the mandate of the Court of Appeals and enlarge upon it by adding interest thereto.

Thus, the opinion below involves only the right to enjoin a state court action under the applicable Federal statute, that is, to enjoin the piecemeal litigation of a controversy already settled in a Federal court. Interest on the Federal court judgment was purely a matter incidental to that judgment and solely within the purview of the federal courts. The fact that Petitioners failed and neglected to ask for and get a determination of that issue in the course of the litigation, does not raise any question of national import, or any important question of federal law sufficient to justify certiorari jurisdiction. Petitioners were not seeking to merely "enforce" the District Court judgment in Illinois as they contend; they were seeking to amend and infringe upon it.

I.

There is No Conflict of Decision.

Petitioners assert that there is a conflict between the 5th Circuit and the 2nd Circuit as to whether the *Briggs* case permits interest on a verdict from a date prior to that of the mandate of a court of appeals. Respondent submits that there is no such conflict. It is quite clear that this Court in the *Briggs* case never reached the question of whether interest should or should not be allowed under these circumstances. Certiorari was granted in the *Briggs* case to resolve the conflict as such interest, but this Court expressly left open that question and decided the case on other grounds. There is a conflict between the circuits as to such interest. Had Petitioners raised the question of interest below, and obtained a decision one way or the other, Respondents would join in the request for certiorari, because then such conflict could be resolved. Certiorari in the instant case could not resolve that conflict. A reversal of the opinion below would merely allow the Superior Court of Cook County to proceed to decide such qeustion, thus adding to the conflict and not resolving it. In short, the opinion sought to be reviewed is not in conflict with the 2nd Circuit case of *Powers* v. *N.Y. C. R. Co.*, 251 Fed. 2nd 813 (1958) or with the 5th Circuit case of *Louisiana & Arkansas Ry. Co.* v. *Pratt*, 142 Fed. 2nd 905; but on the contrary is in harmony with the decisions of this Court and of the several Courts of Appeal as to the right to enjoin state court actions.

II.

The District Court and the Court of Appeals Have Not departed So Far from the Applicable Principles of Decision as to Call for Certiorari.

Petitioners assert that since judgments notwithstanding the verdict and appeals therefrom are common, this Court should determine whether interest should run from the date of the verdict or from the date of the mandate as the lower courts have held in this case. Respondent submits that the lower courts did not so hold in this case. They did not so hold because Petitioners neglected and failed to present this question. See Appendix II (page 26 of Petition) where the District Court said: "The question whether plaintiffs, if timely and proper application has been made, might be entitled to interest from date of verdict as provided by Section 19-2002 Burns Indiana Statutes is not the issue to be decided on this motion. The issue to be decided is whether the court has the power to enjoin plaintiffs from proceeding in the state court action and whether that power should on the facts be exercised."

III.

The Decision Below is Clearly Correct.

A. The District Court had jurisdiction of the Petitioners for Purpose of the Injunction in question.

Although the litigation had terminated in the sense that the issues arising between the parties had been adjudicated, the court had jurisdiction supplementary or ancillary to the main action for the injunction. It is fundamental that a court having jurisdiction to render a judgment has authority and jurisdiction to make such orders and writs as may be necessary to carry the judgment into effect. This Court has held in several cases that a party to a judgment cannot escape later enforce-

ment of that judgment by absenting himself from the district. An independent jurisdictional basis, and service of summons are not required in these circumstances. Such was the holding in: *Leman* v. *Krentler-Arnold Hinge Last Co.*, 284 U.S. 448, 76 Law. Ed. 389, and *Minnesota Co.* v. *St. Paul Co.*, 69 U.S. (2 Wall) 609, 632, 17 Law Ed. 886.

B. The right to enjoin prosecution of a state court action which seeks to relitigate matters already adjudicated in a federal court, has been firmly established and often used.

The following two cases upheld this type of injunction, and by way of supplemental proceedings after termination of the main action: *Williams* v. *Pacific Royalty Co.*, 247 Fed. 2nd 672 (C.A. 10, 1957), and *Berman* v. *Denver Tramway Corp.*, 197 Fed. 2nd 946 (C.A. 10, 1952). In the *Williams* case, the Court of Appeals said:

> "The right of the Federal Court to enjoin the prosecution of a state court action to effectuate its judgment is not questioned. We have held that 'A federal court is clothed with power to secure and preserve to parties the fruits and advantages of its judgment or decree. In the appropriate exercise of that power, the court has jurisdiction through means of a supplemental proceeding to enjoin the relitigation in a state court of a matter litigated, determined and adjudicated by its valid decree regularly entered, if the result of the relitigation would be to destroy the effect of the decree rendered in the United States Court'".

The specific statutory authority for the injunction in question was 28 U.S.C. 2283, set forth at the beginning of this brief.

C. The Injunction was propertly issued on these facts because the rights of the parties were adjudicated and fixed by the mandate of the Court of Appeals on the first appeal.

In view of the following holding of this Court in *Briggs v. Pennsylvania R. Co.*, 334 U.S. 304,:

> "The plaintiff has at no time moved to amend the mandate which is the basis of the judgment. That it made no provision for interest was apparent on its face. Plaintiff accepted its advantages and brings her case to this Court, not on the proposition that amendment of the mandate has been improperly refused, but on the ground that the mandate should be disregarded. Such a position cannot be sustained. Hence the question whether interest might, on proper application, have been allowed, is not reached."

the District Court and the Court of Appeals for the Seventh Circuit could only conclude that these Petitioners likewise had accepted the advantages of the mandate reinstating verdicts of $103,000.00 in their favor, but now proposed to have the Superior Court of Cook County, Illinois disregard the mandate as to interest. The District Court and the Court of Appeals for the Seventh Circuit also rightly concluded, that if the trial court in the *Briggs* case had no power to enter a judgment for an amount different than directed by the mandate, neither did the Superior Court of Cook County, Illinois have such power in the instant case.

CONCLUSION.

Petitioners claim, that a state court has jurisdiction to modify or amend a final judgment of a United States court, is so irrational that it answers itself. For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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